



351337

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
-vs-) No. 83 CH 3812
)
FILM RECOVERY SYSTEMS CORPORATION)
et al.,)
)
Defendants.)

NOTICE OF MOTION

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on Friday, January 27, 1984, at 11:00 a.m. I shall appear before the Honorable Judge Albert Green, or any judge sitting in his stead, and present the attached Plaintiff's Renewed Motion For Emergency Relief and Motion For Additional Emergency Relief, a copy of which is attached hereto.

NEIL F. HARTIGAN
Attorney General
State of Illinois

By: Joseph A. Drazek
JOSEPH A. DRAZEK
Assistant Attorney General
Environmental Control Division
160 North LaSalle Street, Room 900
ATTORNEY CODE NO. 51984
Chicago, IL 60601 (312) 793-2512

OF COUNSEL:
MICHAEL A. FICARO
Chief, Criminal Prosecutions
& Trials
DENNIS PORTER
Assistant Attorney General

CERTIFICATE OF SERVICE

I, JOSEPH DRAZEK, do state that I caused to be served by hand delivery the foregoing Notice of Plaintiff's Renewed Motion For Emergency Relief and Motion For Additional Emergency Relief upon the persons listed on said Notice and by first class mail to Richard Mugalian with the United States Postal Service at 160 North LaSalle Street, Chicago, Illinois This 26th day of January, 1984.

Joseph A. Drazek

Subscribed and sworn to
before me this 27th day
of January, 1984.

John D. Sladek
Notary Public

SERVICE LIST

Thomas J. Royce, Ltd.
30 North LaSalle Street
Suite 3434
Chicago, IL 60602

Morton Denlow and
Jeffrey T. Gilbert
Sachnoff, Weaver &
Rubenstein, Ltd.
One IBM Plaza
47th Floor
Chicago, IL 60611

Steve Mora and
John Morrison
Karon, Morrison &
Savikas, Ltd.
5720 Sears Tower
Chicago, IL 60606

Joseph L. Baime
Baime and Baime
Suite 1223
180 North LaSalle Street
Chicago, IL 60601

Robert J. Walinski
Goble and Goble, Ltd.
111 West Washington
Suite 1920
Chicago, IL 60602

Donald S. Lavin
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Thomas W. Weaver
Sidley & Austin
One First National Plaza
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Mr. James Murray
Metropolitan Sanitary District
100 East Erie Street
Chicago, IL 60611

William T. Rodeghier
111 West Washington
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Richard Mugalian
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111 West Monroe, Suite 2000
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Morrison and Kamins
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Robert L. Byman
Jenner and Block
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Donald Weiland
Forsberg, Marsh, Wenzel
& Kerwin
135 South LaSalle Street
Suite 2140
Chicago, IL 60603

Jonathan K. Gray
John Griffin
Walter M. Ketchum, Ltd.
120 West Madison Street
Suite 711
Chicago, IL 60602

Mr. Delbert Haschemeyer
Illinois Environmental Protection
Agency
2200 Churchill Road
Springfield, IL 62706

Louis B. Garippo, Ltd.
18th Floor
100 West Monroe Street
Chicago, IL 60603

IN THE CIRCUIT COURT OF COCK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

| | | |
|------------------------------------|---|------------------------|
| PEOPLE OF THE STATE OF ILLINOIS |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 83 CH 3812 |
| |) | |
| FILM RECOVERY SYSTEMS CORPORATION, |) | Honorable Albert Green |
| et al., |) | Judge Presiding |
| |) | |
| Defendants. |) | |

RENEWED MOTION FOR EMERGENCY INJUNCTIVE RELIEF
AND FOR ADDITIONAL EMERGENCY RELIEF

Now Come the People of the State of Illinois by their attorney, NEIL F. HARTIGAN, Attorney General of Illinois, and present their Renewed Motion For Emergency Injunctive Relief And For Additional Emergency Relief.

In support thereof, plaintiffs state as follows:

INTRODUCTION

This motion is presented to the Court at this time because it has become apparent that the relief requested by the Plaintiffs cannot be obtained from the defendants without the coercion of an order of court. Eight (8) months ago the Plaintiffs brought to the attention of this Court the existence of an emergency situation that threatened the public health and safety of the People of the State of Illinois.

Notwithstanding substantial investments of time, energy and resources made by the court and the Plaintiffs, the dangerous conditions existing in May of 1983 remain virtually unchanged

today. In fact, the entire focus of this litigation has been blurred. The dangerous conditions which presented, and continue to present, a serious threat to the public health and safety have taken a back seat to continued abortive attempts to correct those conditions. The defendants, those responsible for creating the threat to the public and those largely responsible for and capable of correcting it, have artfully directed this Court's attention from the danger of the illness to their collective failure to effect a cure. The end result, however, is that the threat to the public health and safety, which was discovered in May of 1983, remains unchecked in January of 1984. Plaintiffs, the People of the State of Illinois, now believe that no more time can be wasted seeking the voluntary cooperation of the defendants in ending the admitted threat to the public. Accordingly, the Plaintiffs hereby renew their request for emergency injunctive relief.

FACTUAL BACKGROUND

1. On May 12, 1983, the People of the State of Illinois instituted this action for injunctive relief. The complaint has subsequently been amended to add additional parties and a claim for a writ of mandamus. (See Fourth Amended Complaint for Injunction, Mandamus and Other Relief).

2. From its inception, the plaintiffs have presented this case as a matter of great emergency which involves issues of serious potential harm to the health and safety of the People of the State of Illinois.

3. This Court has recognized the need for emergency relief to remedy the serious threat to the public health and safety, and on May 12, 1983, entered a Temporary Restraining Order addressed to initial security problems which existed at the various sites where 16 million pounds of cyanide coated film chips, which are the subject matter of this suit, are located.

4. Subsequently, on May 23, 1983, the plaintiffs moved for a Preliminary Injunction in order to continue the security precautions instituted by the Temporary Restraining Order and to begin the cleaning of the hazardous waste which endangers the public health and safety of the People of the State of Illinois, but particularly the citizens of Cook and Lee Counties.

5. Upon presentation of plaintiff's Motion for Preliminary Injunctive Relief, this Court, very responsibly and in good faith, offered its offices and time to the parties in order to institute and facilitate a resolution of this serious matter without resort to further adversarial hearings and litigation. Consequently, the plaintiffs in good faith actively participated in this Court's efforts to expeditiously eliminate the threat to the public presented by the cyanide contaminated film chips. (A detailed chronology of the procedural and factual events that followed is attached as Exhibit A).

6. The Illinois Environmental Protection Agency (I.E.P.A.) agreed to supervise the clean-up of the cyanide chips and to maintain security at the sites upon which the hazardous material had been stored. This Court entered an order to that effect on

May 25, 1983. The I.E.P.A. is the state agency mandated by Illinois law to, inter alia, eliminate immediate and long-term danger to the environment or to the public health and welfare. Ill. Rev. Stat. 1981, ch. 111 1/2 par. 1001, et seq.. (See also Count XV of plaintiff's Fourth Amended Complaint). Funding was to be provided by defendants.

7. The I.E.P.A. through its director, Richard J. Carlson and the Governor of the State of Illinois certified, as provided by law, Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1022.2(d), that the presence of the cyanide contaminated film chips at the sites in Cook and Lee Counties presented a serious threat to the People of the State and that those sites will or may cause immediate or long-term danger to the environment or the public health or to the welfare of the plaintiffs. (See Count XV of the Fourth Amended Complaint).

8. On June 16, 1983, I.E.P.A. requested that the Court approve a contract between Petrochem and I.E.P.A. to commence and complete the clean-up of the hazardous waste materials on the sites in Cook and Lee Counties. This Court, based upon the representation of the I.E.P.A., entered an order approving that contract.

9. Simultaneously with the approval of that contract for clean-up, I.E.P.A. informed the parties and the Court that it no longer had funds available to provide for security at the sites. In a good faith effort to provide safety and to expedite the speedy elimination of the admitted public danger, the Office of

the Illinois Attorney General volunteered the use of its funds in order to provide the site security that I.E.P.A. alleged it could no longer provide.

10. The Petrochem clean-up procedures, which were recommended and approved by I.E.P.A., were commenced under the alleged supervision and control of I.E.P.A..

a. In spite of the fact that the estimated clean-up cost for all the cyanide contaminated chips was \$250,000, the contract was terminated after payment of over \$200,000 and detoxification of less than one-tenth of the 16 million pounds of hazardous waste.

b. In spite of the alleged supervision of I.E.P.A., cyanide contaminated effluent was discharged into the Metropolitan Sanitary District sewer system and had to be stopped.

11. The clean-up procedures employed by Petrochem and recommended and approved by I.E.P.A. failed in every respect. Further, I.E.P.A. was unable or unwilling to investigate and undertake alternative means to dispose of the remaining 14.5 million pounds of contaminated chips.

12. Again, in a good faith effort to expedite the clean-up and disposal of the public danger presented by the cyanide-coated chips, the Illinois Attorney General's Office volunteered funds from its budget to retain an expert research institute to examine the problem and determine a feasible method for disposal. The

Attorney General retained the Illinois Institute of Technology Research Institute (IITRI).

13. On August 31, 1983, IITRI reported that the most feasible method of disposal appeared to be incineration but that a test burn would be required. I.E.P.A. was provided copies of that report and is fully aware of its content.

14. No further efforts were made by I.E.P.A. to clean up the sites or otherwise dispose of the hazardous material, although numerous requests and demands were made of I.E.P.A. to develop and implement a plan to clean-up the sites in Cook and Lee Counties on an emergency basis. Furthermore, although optimum safety and security of these dangerous materials could best be achieved by consolidation of the materials at one secure site, I.E.P.A. was either unable or unwilling to:

a. Locate or procure any site(s) where the chips could be safely stored pending the development of safe detoxification and disposal procedure;

b. Provide tractors capable of safely moving the trailers containing the hazardous materials to one secure location;

c. Provide supervision and control of the handling , detoxification, and storage of the hazardous materials;

d. Provide accurate, undistorted reports on the condition and dangers of the contaminated chips and their deteriorating containers;

e. Remove, in a timely fashion, a number of chip-laden trailers from the private property of an innocent landowner who had cooperated with the Court and the State, in effect, making the State a de facto trespasser.

15. Notwithstanding those demands and its statutory duties, I.E.P.A. refused to develop or institute a plan for the disposal of the remaining cyanide coated chips. The Attorney General, however, in spite of I.E.P.A.'s refusal, continued its effort to find a solution to the public danger and requested the assistance of the United States Environmental Protection Agency (U.S.E.P.A.) to determine the safety of a test burn.

16. On October 15, 1983, the plaintiffs, through the Attorney General, filed an amended complaint in this matter adding a count in mandamus against Richard J. Carlson and Delbert D. Haschemeyer, Director and Deputy Director of I.E.P.A., respectively. (Count XV of Fourth Amended Complaint). That count alleges that the defendants, Carlson and Haschemeyer, have refused to perform their non-discretionary duty to clean up and dispose of the cyanide coated chips which they have certified will or may cause immediate or long-term danger to the environment or the public health and welfare of the plaintiffs.

17. Subsequent to that amendment, the I.E.P.A. and Defendants Carlson and Haschemeyer have appeared before this Court and made various reports of status to the Court and the parties. Recently, they have informed the Court of the possibility of obtaining funds for clean-up and disposal from the U.S.E.P.A. under the Superfund program.

18. The plaintiffs have been informed by Defendants Carlson and Haschemeyer, and the I.E.P.A., that prior to receipt of funding from U.S.E.P.A., a test burn must be performed to ensure that disposal by incineration is a safe alternative. Pursuant to its procedures and requirements, the U.S.E.P.A. agreed to provide approximately 80% (\$50,000) of the funding necessary to institute the required test burn and the monitoring of that burn to ascertain its safety as a means of disposal.

19. Plaintiffs were further informed that the additional 20% funding (\$10,000) for the test burn would have to be provided by the State of Illinois. I.E.P.A., the agency responsible for such funding, through defendant Haschemeyer, informed the plaintiffs and this Court that it was without funds to provide the required funding.

20. On November 15, 1983, this Court directed the parties to obtain the necessary funding and to proceed with the test burn.

21. Once again, in order to promote the Court-supervised elimination of the danger to the public caused by the continued presence of the cyanide contaminated film chips, the Office of

the Attorney General volunteered its resources. To avoid any further delay in the disposal process while the funding question was debated, and based upon defendants representation of insufficient funding, the Office of the Attorney General, in good faith, agreed to provide I.E.P.A. with funds to conduct the test burn required by U.S.E.P.A..

22. I.E.P.A., and on information and belief, U.S.E.P.A., developed a plan for a test burn and appropriate monitoring. Its plan provided, in part, for the test burn to be performed at the facilities of C.E. Raymond in Naperville, Illinois.

23. Arrangements for the test burn were made by the I.E.P.A. and U.S.E.P.A., the agencies which have the expertise and responsibility to plan and to implement the disposal of this hazardous material under their respective statutes. Pursuant to those arrangements and as mentioned above, the Attorney General's Office took the necessary steps to provide I.E.P.A. with the funds needed by signing a contract to pay C.E. Raymond from Attorney General's appropriation.

24. On December 13, 1983, I.E.P.A. and U.S.E.P.A. both issued emergency permits to allow the C.E. Raymond Company to conduct the test burn developed by those agencies. Both permits specifically detailed the plans and conditions under which the test burn was going to be performed. (Permits attached as Exhibits B and C). After such permits were issued, and based upon representations that the test burn was safe, the Office of

the Attorney General on December 26, 1983, executed a contract committing up to \$11,600 to fund the I.E.P.A. arranged test burn.

25. I.E.P.A. and U.S.E.P.A. and C.E. Raymond agreed that the test burn would be conducted beginning on January 23, 1984, and continue for six (6) days.

26. On December 19, 1983, the City Council of Naperville, Illinois approved the test burn at C.E. Raymond.

27. On January 19, 1984, James R. Thompson, the Governor of Illinois, called the Attorney General in Champaign, Illinois. The Governor requested that the Attorney General join with him in canceling the test burn scheduled for January 23, 1984.

28. The Attorney General agreed to defer to the wishes of the Governor in view of the fact that it was one of the Governor's executive agencies, namely I.E.P.A., which allegedly has the technical expertise and clearly has the legal responsibility to remedy the dangerous conditions existing in Cook and Lee Counties.

29. The Attorney General's deferral to the Governor and his agency was expressly conditioned upon the development of an alternative course of action for the immediate protection of the public health and safety of the people of Cook and Lee Counties.

30. Later, on January 19, 1984, the Governor, in announcing the cancellation of the scheduled test burn at C.E. Raymond, stated that any test burn would be performed, if at all, only outside the State of Illinois.

31. Since the cancellation of the test burn, the Attorney General has not been advised by the Governor, I.E.P.A. or any other person or agency what alternative plans have been developed or planned for the disposal of the contaminated chips in Cook and Lee Counties.

32. Consequently, the test-burn, which was the initial step in I.E.P.A.'s most recent plan for cleaning up the dangerous conditions existing in Cook and Lee Counties has, like I.E.P.A.'s other failed attempts, proved to be unsuccessful and no alternative has been offered. (u) Xe!

CURRENT STATUS

33. Notwithstanding the extraordinary good faith efforts of this Court and the plaintiffs over a eight (8) month period, there are 14.5 million pounds of cyanide contaminated film chips still present in the same dangerous state within Cook and Lee Counties.

34. After approximately eight (8) months of effort by the Court and the plaintiffs to effectuate an expeditious removal of the dangerous materials threatening the citizens of the State of Illinois, particularly those of Cook and Lee Counties, the only significant event to have transpired has been the fruitless expenditure of over \$200,000 on I.E.P.A.'s ill-fated Petrochem experience.

35. For approximately eight (8) months the plaintiffs through the Attorney General of Illinois, have attempted to

Secure the speedy removal of 16 million pounds of unlawfully situated hazardous waste. Waste which was certified by the Governor and I.E.P.A. as long ago as May of 1983 to constitute an immediate or long-term danger to the environment and to the public health and welfare, is still infecting our state's environment.

36. The recent cancellation of the scheduled test burn may jeopardize the State's ability to obtain substantial amounts of funding from U.S.E.P.A. under the Superfund program. I.E.P.A.'s unwillingness or inability to fund a successful clean-up of the cyanide coated chips makes the acquisition of Superfund dollars a critical step in abating the serious threats those chips pose to the public.

37. This condition, and the defendants refusal to promptly remedy the admittedly dangerous conditions which threaten the citizens of Cook and Lee Counties can no longer be allowed to continue.

38. The continued jeopardy of the public safety, health and welfare creates an emergency situation which requires immediate injunctive relief from this Court.

THE LEGAL CLAIMS

39. Plaintiff's reassert and adopt herein by reference the allegations of their Motion for Preliminary Injunction filed on May 12, 1983, as if fully set forth herein.

40. Defendants Carlson and Haschemeyer have a clear legal duty to take all steps necessary to protect the citizens of Illinois from the dangers presented by the unlawful presence of such large amounts of hazardous waste within this State. (Count XV of the Fourth Amended Complaint).

41. Plaintiffs reassert and adopt by reference the allegations of Count XV of the Fourth Amended Complaint as if fully set forth herein.

42. The plaintiffs, as set forth above, are subject to serious, immediate and irreparable harm, to wit:

a. The unlawful presence of massive amounts (14.5 million pounds) of hazardous waste in the midst of high volume population centers in Cook and Lee Counties is a violation of State law. (Counts I through XIV inclusive and statutes set forth therein). Statutory violations constitute per se irreparable harm to the public.

b. The unlawful presence of 14.5 million pounds of cyanide coated film chips in the midst of high volume population centers in Cook and Lee Counties constitute a public nuisance of the greatest magnitude. Public nuisances of this type constitute irreparable harm.

c. The I.E.P.A., the Governor of Illinois, and Defendant Carlson have certified that the unlawful presence of 16 million pounds of cyanide contaminated hazardous waste in Cook and Lee Counties poses an immediate or long term danger to the environment and the public health and welfare. Immediate or long-term danger to the environment or public health and welfare constitute irreparable harm.

43. Plaintiffs have no adequate remedy at law.

a. Injury to the public health and welfare of the citizens of Illinois cannot be compensated by money damages.

b. The continued exposure of large population centers to the threat of serious harm from massive amounts of highly toxic hazardous waste cannot be compensated or prevented by traditional legal remedies.

c. The failure of a governmental agency such as I.E.P.A. to timely develop and institute an emergency plan, as provided by law, to eliminate a public danger which it has certified may cause immediate and long-term danger to the environment and public health and welfare, is not redressable, save through emergency injunctive and equitable relief.

44. The plaintiffs, the People of the State of Illinois, have a clearly ascertained right which is free from doubt and which requires the protection of this court through the granting of injunctive and other equitable relief.

a. The plaintiffs have a clear legal right not to be exposed or endangered by the unlawful storage of massive amounts of highly toxic hazardous waste in their environment. (Fourth Amended Complaint, Counts I through XIV and statutes set forth therein).

b. The plaintiffs have a clear legal right, free from doubt, to have a governmental agency, which is charged with the responsibility and authority to eliminate such threats to the public health and welfare, take all steps necessary to protect that public interest.

c. The plaintiffs have a clear legal right to expect, indeed demand, that the defendants and each of them, bear responsibility for immediately causing such dangerous conditions to be eliminated or abated, pendente lite.

45. The plaintiffs have a substantial likelihood of success on the merits of their claim.

a. It cannot be disputed that defendants, or some of them have violated numerous statutory provisions regulating the storage of hazardous waste and

the protection of the environment and the public health and welfare.

b. The I.E.P.A. and Defendant Carlson have previously certified that the existence of massive amounts of cyanide coated film chips present a threat to the environment and the health and welfare of the plaintiffs. Defendants Carlson and Haschemeyer cannot now deny the problem or responsibility for its immediate abatement. (See Count XV of Fourth Amended Complaint).

c. As between the various defendants and the plaintiffs there can be little doubt that the plaintiffs will prevail on the merits, and that this Court will order a prompt and complete elimination of the dangerous conditions that 14.5 million pounds of cyanide contaminated hazardous waste have presented in Cook and Lee Counties.

46. Issuance of emergency injunctive relief will not injure, but most certainly will protect, the public interest.

a. If this Court issues the emergency injunctive relief requested herein no irreparable injury will be suffered by the defendants. Any temporary economic effect on the defendants if injunctive relief is granted pales by comparison to the injury confronting the public.

b. Conversely, the interest of the public is, in this instance, synonymous with the interests of the plaintiffs and mandates the immediate elimination of what has been certified as a serious threat to the public health and welfare. Apportionment of economic responsibility and final determination of damages, if any, to be assessed against the defendants is provided by law and may await the orderly presentation of this case to the court. The protection of the public health and welfare can enjoy no such delay.

WHEREFORE, plaintiffs pray for the following relief:

A. Entry of an order requiring the defendants, and each of them, to dispose of the hazardous waste stored on the subject sites in accordance with all applicable laws and with due deference to the protection of the public safety, health and welfare.

B. Entry of an order enjoining the defendants and each of them from continuing or permitting the continued, unlawful existence of the subject hazardous materials upon the sites enumerated in the complaint and subject to this litigation.

C. Entry of an order requiring Defendants Carlson and Haschemeyer to forthwith perform their clearly ascertainable non-discretionary duties including, but not limited to:

1. The immediate development and presentation to this Court of a comprehensive plan for the disposal of 14.5 million pounds of cyanide contaminated film chips which are the subject of this litigation;

2. The prompt implementation of that plan without any further delay;

3. The implementation of a plan for the immediate security of the various sites during the implementation of the disposal plan, and continuing at each site until such time as each site is completely free of any of the subject hazardous waste, or alternatively;

4. The relocation and consolidation of all contaminated chips into one safe and secure location until an effective disposal plan can be developed and implemented by defendants.

5. The immediate performance of any or all duties set forth in paragraph 8 of Count XV of Plaintiffs' Fourth Amended Complaint.

D. Such other and further relief as this Court deems just and equitable.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General of Illinois

Of Counsel

Charles W. Murdock
Deputy Attorney General

Michael A. Ficarò
Chief, Criminal Prosecutions & Trials

Dennis Porter
Joseph A. Drazek
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793-2512

Chronology of Events

May 12, 1983 Complaint For Injunction and Other Relief, Emergency Motion For Temporary Restraining Order and Motion For Preliminary Injunction filed in Cook County Circuit Court. Temporary Restraining Order entered.

May 23, 1983 Hearing on Motion for Preliminary Injunction. Defendants Steven O'Neal, Michael T. MacKay and Donald Jader are dismissed.

May 24-25, 1983 In camera hearing held to discuss disposal of chips.

May 25, 1983 Agreed Order entered. Clean-up to be performed by Petrochem, Inc. at cost of \$250,000 under contract with IEPA. Three trust funds established under court supervision to fund clean-up. Monies in funds contributed by defendants. IEPA to supervise clean-up and maintain security at all sites. Plaintiff granted leave to file First Amended Complaint adding Bil-Mac Express as defendant.

June 16, 1983 Court approves contract between Petrochem and IEPA. AG informs court it has assumed cost of security as of June 14, 1983.

June 20, 1983 Plaintiff granted leave to file Second Amended Complaint adding P.I.E. as defendant.

July 11, 1983 Petrochem completes decontamination of trailer at Aldens site. Petrochem uncertain as to availability of another site where clean-up can proceed.

July 25, 1983 Aldens agrees to allow clean-up to proceed at its facility assuming work will be completed by September 16, 1983. Hearing on Plaintiff's Motion to Serve and Transfer Venue to Lee County. Plaintiff's Motion is denied.

July 26, 1983 B.R. MacKay dismissed from lawsuit.

August 1, 1983 10 trailers moved from Summit site to Aldens. Processing by Petrochem is resumed. MSD samples effluent and finds discharges in excess of MSD ordinance. Petrochem's work comes to a halt.

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| August 17, 1983 | Trailers reported to be leaking - IEPA to inspect and have them sealed. |
| August 18, 1983 | AG indicated it will hire the Illinois Institute of Technology Research Institute (IITRI) at its own expense to examine possible methods of disposal. |
| August 31, 1983 | IITRI report indicates that incineration is most feasible method of disposal pending further study. |
| September 2, 1983 | MSD finds that trailers are still leaking and that leachate is flowing off-site at Summit and McCook. |
| September 9, 1983 | Assistance of USEPA requested to do tests regarding incineration. Plaintiff files Verified Petition for Rule to Show Cause against defendants Film Recovery and Metallic Marketing for failure to turn over financial data. |
| October 5, 1983 | MSD given leave to intervene--IEPA reports on re-examination of trailers. Possibility of USEPA funding to seal trailers is discussed. |
| October 13, 1983 | Plaintiff granted leave to file Third Amended Complaint adding Court of Mandamus against Richard J. Carlson, Director of IEPA and Delbert D. Haschemeyer, Deputy Director of IEPA for failure to perform their statutorily mandated duties. |
| October 14, 1983 | Court holds Film Recovery and Metallic Marketing in contempt for failure to turnover financial records and fines each \$1,000 per day. |
| October 24, 1983 | AG files motion to vacate order of July 26, 1983 dismissing B.R. MacKay and Motion to Add Steven J. O'Neil Individually as Party Defendant. |
| November 15, 1983 | Report to judge that USEPA will fund test burn at cost of \$50,000. State to assume \$10,000 cost of renting C.E. Raymond facility in Naperville. IEPA indicates it does not have funds. Court directs AG and IEPA to come up with funds and proceed with burn. |
| November 21, 1983 | Fire Trailer Company defendants file Motion For Dismissal and For Return of Moneys Contributed to Trust Fund. |

December 5, 1983 Trailer Company's Motion For Dismissal
denied; ruling on Trust fund moneys deferred
until January 17, 1983.

December 19, 1983 Napverille City Council approves test burn at
C.E. Raymond.

January 6, 1984 USEPA reports to Court that its work on
trailers is near completion. Test burn
scheduled to proceed on January 23, 1984.

January 17, 1984 Court denies trailer companies motion for
return of monies from trust fund. IEPA
reports to court that testburn is safe.

217/782-2113

OPERATING PERMIT

PERMITTEE

C-E Raymond
200 West Monroe
Chicago, Illinois 60606

Attention: D.R. Leewood

Application No.: 31080048I.D. No.: 043065ABZApplicant's Designation: TEST LABDate Received: December 1, 1983Subject: Application and Development LaboratoryDate Issued: December 13, 1983Expiration Date: August 27, 1986Location: South of E.W. Tollway, 1/4 Mile West of Route 59, Naperville, Illinois

Permit is hereby granted to the above-designated Permittee to OPERATE emission source(s) and/or air pollution control equipment consisting of 18" Verticle Mill with cyclone and baghouse, 3035 Roller Mill and dryer with cyclone and baghouse, #10 Imp Mill and dryer with cyclone and baghouse, Cage Mill and dryer with cyclone and baghouse, #10 Imp Mill Coal firing system with cyclone and baghouse, 3118 VR Mill and dryer with cyclone and baghouse, the Rotary Dryer with cyclone and baghouse, Rotary Kiln and Rotary Electric calcinator and an incinerator all three of which are controlled by an afterburner, precooler, and scrubber as described in the above-referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1. All special conditions of the previously issued joint construction and operating permit dated September 4, 1981 are incorporated herein by reference.
2. This operating permit is being revised to include incineration of cyanide contaminated chips for a period not to exceed ten days from start-up of the test project.
3. On or before February 11, 1984, the permittee shall discontinue the incineration of cyanide chips and return all left-over cyanide chips to the place of origin.



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4. Sampling and analysis is to be conducted by Radian Corporation in accord with the document titled, "Quality Assurance Test Plan For A Pilot Scale Waste Incineration of NaCN contaminated Film Chips" and in accord with the special conditions of this permit. Any deviation from the test plan or any special condition shall require written approval from the IEPA.
5. The test project shall be started with cyanide free chips and then gradually increase the sodium cyanide content in the waste such that cyanide content in the waste shall not exceed 1.0 percent of total waste feed at any time.
6. The feed rate of the film chips shall not exceed 50 lbs/hr.
7. The permittee shall not use more than a total of 2,000 pounds of cyanide contaminated plastic chips during this test project.
8. The incinerator is to be operated within the following parameters:
 - a. The temperature shall be maintained greater than 1200°C at the exit of the secondary chamber.
 - b. The rotary kiln and afterburner shall be maintained under negative pressure.
 - c. Scrubber pH shall be maintained greater than 9.
 - d. The cyanide emitted through the exhaust stack shall be monitored continuously and not be allowed to exceed 10 ppm on a dry basis.
 - e. The incineration process is to be preheated to operating temperature before introduction of the film chips.
 - f. All control equipment is to be operational while feeding waste to the incinerator.
9. The film chip feed shall be discontinued if any of the operating parameters in Special Condition 8 are not maintained.
10. The wastewater discharge from this facility shall be in compliance with any provisions and limitations as imposed by the City of Naperville and the sewer discharge criteria provisions of 35 Ill. Adm. Code 307. A written approval from the City of Naperville accepting this wastewater discharge shall be obtained and submitted to the Agency prior to discharge. All records of wastewater discharges shall be submitted to the IEPA, Division of Water Pollution Control, Region 2 office in Maywood.

1200 x 2 =
2160



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11. Within 10 days of receipt of the final test report, the permittee shall submit two copies of such report to the Permit Section, Division of Air Pollution Control, IEPA.

A handwritten signature in dark ink, appearing to read "Bharat Mathur".

Bharat Mathur, P.E.
Manager, Permit Section
Division of Air Pollution Control

BM:JCC:sd/6572c/15-17

cc: Region 1
Tom McSwiggin



STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
2200 CHURCHILL ROAD
SPRINGFIELD, ILLINOIS 62703

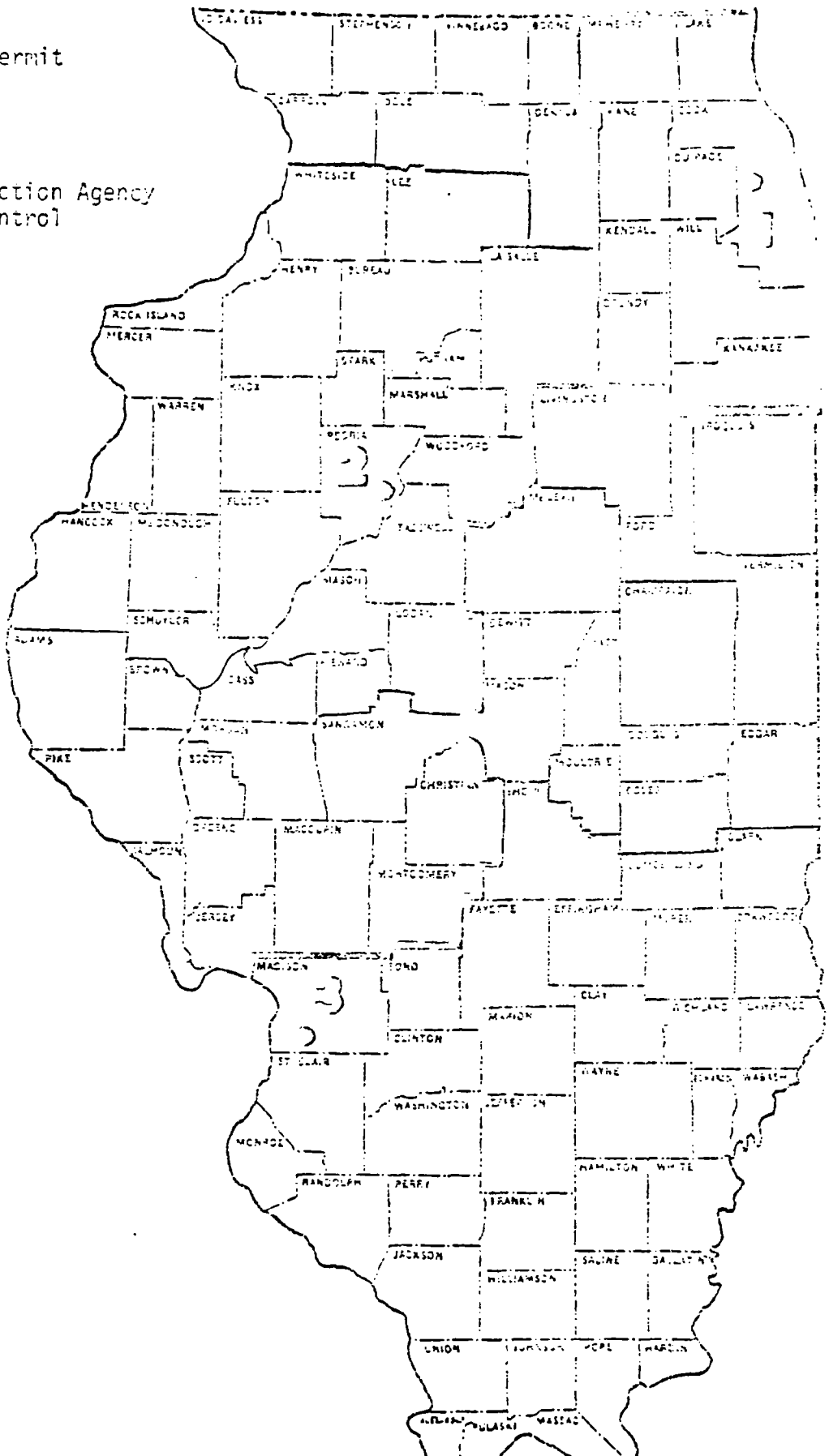
STANDARD CONDITIONS
FOR
OPERATING PERMITS

1. The issuance of an operating permit by the Agency does not release the permittee from compliance with other applicable statutes of the State of Illinois or with applicable local laws, regulations or ordinances.
2. The Agency has granted this permit based upon the information submitted by the permittee in the permit application. Any misinformation, false statement or misrepresentation in the permittee's application shall be grounds for revocation under Rule 103(f), Chapter 2, Part 1 of the Illinois Pollution Control Board Rules and Regulations.
3. The permittee shall not authorize, cause, direct or allow any modification, as defined in Rule 101, Chapter 2, Part 1 of the Illinois Pollution Control Board Rules and Regulations, of equipment, operations or practices which are reflected in the permit application as submitted unless a new application or request for revision of existing application is filed with the Agency at least ninety (90) days prior to the time of such modification and unless a new permit or revision of existing permit is granted for such modification.
4. At any time during normal working and/or operating hours, any agent of the Environmental Protection Agency shall have the right and authority to inspect the equipment and operations described by the permit application. Permittee agrees to allow such inspections. This authority:
 - (a) shall not in any manner affect the title to the premises upon which such equipment is located;
 - (b) does not release the permittee from any liability for any loss due to damage to person or property caused by, resulting from, or arising out of the design, installation, maintenance, or operation of such equipment; and
 - (c) in no manner implies or suggests that the Environmental Protection Agency (or its officers, agents or employees) assumes any liability, directly or indirectly, for any loss due to damage, installation, maintenance, or operation of such equipment.
5. The equipment covered by this permit shall be operated in such a manner that the disposal of air contaminants collected by the equipment shall not cause a violation of the Environmental Protection Act or Regulations promulgated thereunder.
6. The permittee shall maintain the equipment in such a manner that the performance of such equipment shall not cause a violation of the Environmental Protection Act or Regulations promulgated thereunder.
7. The permittee shall maintain a maintenance record on the premises for each item of air pollution control equipment. This record shall be available to any agent of the Environmental Protection Agency at any time during normal working and/or operating hours. This record shall show, as a minimum, the:
 - (a) date of performance of, and nature of, preventative maintenance; and
 - (b) date of any malfunction or breakdown and the nature of repairs to, or corrective measures performed to maintain the performance of the equipment.
8. The permittee shall submit annually, beginning one year from the date of this operating permit, an "Annual Emission Report," form APC-209, as required by Rule 107 of the PCB Regs., Chapter 2, Part 1. (Note: If the permittee has other operating permits for this facility, he may submit the "Annual Emission Report" for all such permits in a single annual submission.)
9. If the permit application contains a "Compliance Program and Project Completion Schedule," form APC-202, the permittee shall submit a "Project Completion Report" form APC-271, within thirty (30) days of any date specified in the "Compliance Program and Project Completion Schedule" or at six month intervals, whichever is more frequent.
10. If the permit contains permission to operate in excess of applicable emission standards during startup, the permittee shall keep a record of each startup, including information as to the length of time that such operation exceeded applicable standards and limitations, and a detailed explanation of why such startup was necessary.
11. If the permit contains permission to operate in excess of applicable emission standards during malfunctions or breakdowns, the permittee shall immediately notify the Agency's regional Field Operations Section office by telegram upon occurrence of malfunction or breakdown, and comply with all directives of the regional office with respect to the incident. (See map on reverse side.)

The permittee shall maintain records of such malfunctions or breakdowns. These records shall include: a full and detailed explanation of why such breakdown occurred; the length of time during which operation continued under conditions of malfunction or breakdown; the measures the permittee used to reduce the length of time of such operation; and the steps the permittee will take to prevent future similar malfunctions or breakdowns. This record shall be available to any agent of the Environmental Protection Agency at any time during normal working and/or operating hours.

The permittee shall not continue operation during malfunction or breakdown beyond such time as is necessary to prevent injury to persons or severe damage to

Region 3
115A West Main
Collinsville, Illinois 62234
(618) 345-0700





UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:

5HW-13

13 DEC 1983

Mr. Joseph L. Sheehan
Vice President, Engineering
C-E Raymond
Combustion Engineering, Inc.
200 West Monroe Street
Chicago, Illinois 60604

Re: Emergency Hazardous Waste Permit
C-E Raymond Application and Research Lab
Naperville, Illinois
EPA ID. ILD980681092

Dear Mr. Sheehan:

Based on our review of your November 30, 1983, letter and the test burn plan, we have determined that issuance of an emergency hazardous waste treatment permit to test burn the cyanide-contaminated film chips at your pilot plant incineration facility in Naperville, Illinois, is warranted pursuant to 40 CFR 270.61. This action is necessary due to the imminent and substantial danger posed by the cyanide-contaminated film chips which are being stored in trailers located in and around the City of Chicago. Approximately eight (8) million pounds of film chips containing approximately 500 ppm total cyanide are stored in these trailers which are not adequately shielded from rain, snow, and other climatic elements. The test burn data is needed to determine the feasibility of incinerating the film chips in a commercial-scale incinerator. Accordingly, this letter constitutes an emergency permit to store and test burn the cyanide contaminated film chips which are hazardous wastes by virtue of their characteristic of reactivity, 40 CFR 261.23(a), subject to the conditions listed in the enclosure to this letter.

This permit is effective as of December 19, 1983, and shall remain in effect until February 11, 1984. It may be terminated at any time without process if this Agency determines that termination is appropriate to protect human health and the environment. The failure of your company to meet any provisions of the permit could result in civil and/or criminal penalties. We have assigned an EPA Identification Number, ILD980681092, to your Application Research Lab so that you may store and treat the hazardous waste for the test burn.

Please contact Mr. Y. J. Kim of my staff at (312) 886-6147, if you have any questions, or need clarification of any of the conditions of the permit.

Sincerely yours,



Basil G. Constantelos, Director
Waste Management Division

Enclosure

cc: Robert G. Kuykendall, Illinois Environmental Protection Agency
Neil F. Hartigan, Attorney General, State of Illinois
Patricia K. Clark, Occupational Safety and Health Administration
Margaret Price, Mayor, City of Naperville
Mary Price, Member, DuPage County Board

C-E Raymond Application and Research Lab
Combustion Engineering, Inc.
Naperville, Illinois
ILD980681093

Emergency Permit Conditions

- I. Standard Conditions. The permit conditions applicable to all RCRA permits contained in 40 CFR 270.30 are hereby incorporated by reference.
- II. General Facility Conditions. The Permittee shall comply with the requirements of the following sections of 40 CFR Part 264, which are hereby incorporated by reference:

| | |
|--------------------|--|
| §264.14 | Security |
| §264.17 | General Requirements for Ignitable, Reactive or Incompatible Wastes |
| §264.31 | Design and Operation of Facility |
| §264.32 | Required Equipment |
| §264.33 | Testing and Maintenance of Equipment |
| §264.34 | Access to Communications or Alarm System |
| §264.37 | Arrangements with Local Authorities |
| §264.55 | Emergency Coordinator |
| §264.56 | Emergency Procedures |
| §264.73(a) and (b) | Operating Record |
| §264.74 | Availability, Retention, and Disposal of Records |
| §264.114 | Disposal or Decontamination of Equipment |
| §264.147 | Liability Requirements |
| §264.148 | Incapacity of Owner or Operators, Guarantors, or Financial Institutions |
| §264.341(b) | Waste Analysis |
| §264.347 | Monitoring and Inspections |

III. Special Conditions

1. The Permittee may test burn up to 2,000 pounds of cyanide-contaminated film chips in the pilot plant incinerator (Unit No. 2) located at C-E Raymond Application and Research Lab, 2151 Fisher Drive, Naperville, Illinois, 60566. The cyanide-contaminated film chips shall be provided by the Attorney General, State of Illinois.
2. The test burn shall be conducted in accordance with the "Quality Assurance Test Plan for a Pilot Scale Waste Incineration of NaCN Contaminated Film Chips" prepared and submitted by Radian Corporation, dated November 23, 1983, as revised on December 6, 1983. Any deviation from the test plan shall require a written authorization from U.S. Environmental Protection Agency (U.S. EPA), Region V. The sampling and analysis shall be conducted by staff member(s) of Radian Corporation under the supervision of U.S. EPA, Office of Research and Development.

3. The concentration of cyanide (CN) in the film chips may be adjusted to facilitate acquisition of destruction and removal efficiency data. However, under no circumstances shall it exceed one (1) percent (%) by weight.
4. The feed rate of film chips to the pilot plant incinerator shall not exceed 50 pounds per hour.
5. The following operating conditions shall be maintained while burning the cyanide-contaminated film chips in the pilot plant incinerator:
 - a. The combustion gas temperature at the exit of the secondary combustion chamber shall be maintained above 1200°C (2,192°F).
 - b. The rotary kiln and secondary combustion chamber shall be maintained below atmospheric pressure.
 - c. The scrubber pH value shall be maintained above 9.
 - d. The concentration of cyanide in the stack emission shall not exceed 10 ppm on a dry volume basis.
 - e. The film chip feed to the pilot plant incinerator shall be cut-off immediately when any of the above conditions are violated.
6. The scrubber blow-down shall be collected and chemically treated before discharge to the public sewer system. The total cyanide content of the scrubber water discharged to the public sewer system shall not exceed 0.0125 ppm.
7. A representative of the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), shall be present to monitor the ambient air in the working area of the pilot plant facility during the test burn. If the cyanide concentration of the ambient air exceeds 10 ppm, the operation of the pilot plant incinerator shall cease immediately and the workers shall be evacuated from the building. The operation of the pilot plant incinerator shall resume only when the cyanide concentration level falls below 5 ppm.